

**VIRGINIA BOARD OF DENTISTRY  
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE  
November 20, 2009**

**TIME AND PLACE:** The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 10:35 A.M. on November 20, 2009 in Board Room 3, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.

**PRESIDING:** Myra Howard, Chair

**MEMBERS PRESENT:** Jacqueline G. Pace, R.D.H.  
Robert B. Hall, Jr., D.D.S.  
Herbert R. Boyd., D.D.S

**OTHER BOARD MEMBERS PRESENT:** Jeffrey Levin, D.D.S.

**STAFF PRESENT:** Sandra K. Reen, Executive Director  
Huong Vu, Administrative Assistant

**OTHERS PRESENT:** Howard M. Casway, Senior Assistant Attorney General  
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

**ESTABLISHMENT OF A QUORUM:** All members of the Committee were present.

**PUBLIC COMMENT:** None

**MINUTES:** Ms. Howard asked if the members had reviewed the minutes of the August 21, 2009 meeting. Dr. Hall moved to accept the minutes. The motion was seconded and passed.

**STATUS REPORT ON REGULATORY ACTIONS:**

**Dental Assistant Regulations** – Ms. Yeatts reported that the dental assistant regulations are at the Governor's office for review and she expects approval by the end of the year. Ms. Reen added that once the regs are approved by the Governor, they will be released for a public comment period of 60 days. Ms. Yeatts stated that after the comment period the Committee will review comment and recommend final regulations to the full Board.

**Mobile Dental Clinics Regulations** – Ms. Yeatts reported these emergency regulations have been approved and will be in effect on January 8, 2010.

**Recovery of Disciplinary Costs** – Ms. Yeatts reported that these regulations are still in the comment period which will end on November 25, 2009.

**DEVELOP REGULATORY  
LANGUAGE FOR  
RECOVERY OF  
DISCIPLINARY COSTS:**

Ms. Yeatts asked the Committee to take a look at the Draft Proposed Regulations on green paper. She stated that information on other states' laws and regulations had been collected, considered in developing the draft language and is included in the hand out for review and discussion. She then went through each section of the draft as follows.

- Subsection A (Assessment of cost for investigation of a disciplinary case) – She stated that this section provides that the investigation costs to be recovered will be calculated based on rates established in a guidance document and stated in disciplinary orders along with the schedule for payment. Discussion addressed the need for fairness with Dr. Hall noting that standard of care complaints often get reduced to recordkeeping findings. He opined that the full investigative costs should not be recovered in such cases.

Ms. Reen asked the Committee for permission to work with Ms. Yeatts on where these provisions are placed in the regulations because she wanted to consider moving them to the General Provisions section. Ms. Howard agreed.

- Subsection B (Assessment of cost for monitoring a licensee or registrant) – She advised that this section provides that monitoring costs would also be calculated based on a guidance document and stated in the order.
- Subsection C (Total of assessment) – Ms. Yeatts reminded the Committee that cost recovery is limited to \$5000. She noted that the fee for inspection of dental offices, the return check fee, and the collection fee are separate charges established in regulations.
- Subsection D (Waiver of recovery of disciplinary costs) – Ms. Yeatts said this section provides for the waiver of costs if there is no reasonable change of recovery and provides that this decision would be addressed in the order. Discussion followed about how the committee or the Board could have objective information about the respondent's finances, about the application of the Administrative Process Act to recovery provisions in an

order and the possibility of addressing cost recovery in a separate document. Mr. Casway advised that cost recovery should be addressed in orders and that the appeal provisions of the APA would apply. Following discussion, Dr. Boyd moved to remove this Subsection D. The motion passed with three members voting in favor – Ms. Howard, Dr. Boyd and Ms. Pace and one member voting against – Dr. Hall.

Ms. Pace moved to take the proposed draft as amended to the Board for consideration at its December meeting. The motion was seconded and passed.

**PERIODIC REVIEW OF REGULATIONS:**

**Chart on Part V, Unprofessional Conduct** – Ms. Reen gave a brief review of the part by part internal review the Committee is conducting then stated that she has received the last committee member review on Part IV so the mark-up will be prepared for the next meeting. She then presented the chart on Part V that the members will use to identify possible changes to this section. She asked Committee members to think about any additional concerns or considerations that need to be added while reviewing this part. She reminded the Committee that there are two more sections to be completed. She plans to have all three parts (V, VI, and VII) ready for discussion at the next meeting. Ms. Howard said that the Committee will start the process alphabetically with her being last.

**NEXT MEETING:**

Ms. Howard asked about dates for scheduling the next meeting. It was agreed that staff will either schedule the meeting on Friday, January 22, 2009 or poll the Committee for available dates.

**ADJOURNMENT:**

Ms. Howard adjourned the meeting at 12:13 p.m.

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Myra Howard, Chair

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Sandra K. Reen, Executive Director

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Date

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Date